

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/021,421	02/10/98	JORDAN	R 50207/002

HM12/0503

DAN CLEVELAND, JR.
LATHROP, GAGE & SULLIVAN
4845 PEARL EAST CIRCLE
SUITE 302
BOULDER CO 80301

EXAMINER
GOLDBERG, J

ART UNIT	PAPER NUMBER
1614	20

DATE MAILED: 05/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/021,421	Applicant(s) Jordan
Examiner Jerome D. Goldberg	Group Art Unit 1614



Responsive to communication(s) filed on Feb 17, 2001

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-7 and 14-38 is/are pending in the application.

Of the above, claim(s) 23-33 and 38 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-7, 14-22, and 34-37 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1614

Claims 23-33 and 38^{are} withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 11.

Applicants are not required to cancel the non-elected claims ^{and} ~~as~~ the non-elected subject matter from the other claims.

Claim 39 has been renumbered as claim 38.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7, 14-22 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the WO 88/03805 publication.

wd-dec
The WO 88/03805 teaches applicants' compound quercetin (page 119, line 23) being mixed with halide of zinc for prevention of tumor cells. The publication further state on page 9,

Art Unit: 1614

that the metal salt can be an escharotic metal salts including zinc chloride. The middle of page 10 and page 31, first paragraph set forth carriers and page 34 set forth the utility. On page 35, Table I set forth the percent of zinc at 1-30% and the cat. but. ^{at} At 1-10% and a ratio of 1:5 to 5:1. The publication fail to disclose some of the carrier. Accordingly, one skilled in this art would be motivated to use the above composition to treat tumors in view of the intended use set forth in the publication. Clearly, a showing over the prior art is needed.

Claims 1-7, 14-22 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the EP 0506207 A² of record and the G.B. 1215676 of record for the reasons fully set forth in Paper No. 12, pages 2 and 3.

Applicants' remarks are noted but a side-by-aide comparison is needed. The ^{potestio} declaration is noted but the prior art was not tested with the claimed invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 7 are improperly drawn to the same composition. Correction is required.

The addition of the term "escharotic chelatable metal agent" to claims was the reasons for the added reference.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1614

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner J. D. Goldberg whose telephone number is (703) -308-4606. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Cintins, can be reached on (703) -308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) -308-4556 or 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Goldberg/LR

April 25, 2001

